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8 Attorneys for Federal Defendant

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 DAVID MCKEW,

13 Plaintiff,

14 v.

15 SAN FRANCISCO MUNICIPAL
16 RAILWAY; UNITED STATES POSTAL
SERVICE; MELVIN WASHINGTON.

17 Defendants.

No. C 08-0855 EDL

& Related Case No. C 07-3620 EDL

E-FILING CASE

**STIPULATION AND PROPOSED
ORDER APPROVING SETTLEMENT**

18 THE PARTIES, BY AND THROUGH THEIR ATTORNEYS OF RECORD, HEREBY
19 SUBMIT THE FOLLOWING STIPULATION:

20 WHEREAS, the parties attended a mediation on July 30, 2008;

21 WHEREAS, at the mediation, the parties reached agreement on the terms of settlement
22 recorded herein;

23 IT IS HEREBY STIPULATED as follows:

- 24 1. The parties to this litigation are Plaintiff David McKew, Defendant City and
25 County of San Francisco, and Defendant United States Postal Service.
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- 1 2. The parties do hereby agree to settle and compromise the above-entitled action
2 under the terms and conditions set forth herein. This stipulation for compromise
3 settlement is entered into by all parties for the purpose of compromising disputed
4 claims and avoiding the expenses and risks of litigation. This settlement does not
5 constitute an admission of liability or fault on the part of any party.
- 6 3. Plaintiff and his attorneys, executors, administrators or assigns hereby agree to
7 accept the sum of \$18,000.00 (Eighteen Thousand Dollars exactly), consisting of
8 \$10,000.00 (Ten Thousand Dollars exactly) payable by Defendant City and
9 County of San Francisco and \$8,000.00 (Eight Thousand Dollars exactly) payable
10 by Defendant United States Postal Service, under the terms and conditions set
11 forth herein, which shall be in full settlement and satisfaction of any and all
12 claims, demands, rights, and causes of action of whatsoever kind and nature,
13 arising from, and by reason of any and all known and unknown, foreseen and
14 unforeseen bodily and personal injuries, damage to property and the consequences
15 thereof, resulting, and to result, from the same subject matter that gave rise to the
16 above-captioned lawsuit, for which plaintiff, his heirs, executors, administrators,
17 or assigns, and each of them, now have or may hereafter acquire against the
18 United States Postal Service or its agents, servants, insurers and employees.
- 19 4. Plaintiff and his attorneys, heirs, executors, administrators or assigns further agree
20 to reimburse, indemnify and hold harmless the Defendants, City and County of
21 San Francisco and United States Postal Service, and their agents, servants or
22 employees from any and all such causes of action, claims, liens, rights, or
23 subrogated or contribution interests incident to or resulting from further litigation
24 or the prosecution of claims by plaintiffs or their heirs, executors, administrators
25 or assigns against any third party or against either Defendant. Plaintiff McKew
26 presents and warrants that either (a) there are no liens, including without
27 limitation any medical reimbursement, unemployment or disability compensation
28 liens, in existence which may attach to the amount of the settlement or to any

1 recovery paid to Plaintiff McKew, or (b) to the extent there are any such liens,
2 plaintiff McKew will pay and retire all such liens out of the settlement amount
3 described in this stipulation. Plaintiff McKew agrees to defend, indemnify and
4 hold harmless Defendants City and County of San Francisco and United States
5 Postal Service, and each of them, against any and all claims by any person or
6 entity purporting to hold any lien, interest, or other claim, whether for medical
7 care, unemployment and/or disability compensation, attorneys' fees, or otherwise,
8 involving Plaintiff McKew and arising in connection with any of the claims
9 arising from the subject matter of this litigation.

10 5. In consideration of the payment of \$18,000.00 (Eighteen Thousand Dollars
11 exactly), comprised of \$10,000.00 (Ten Thousand Dollars exactly) payable by
12 Defendant City and County of San Francisco and \$8,000.00 (Eight Thousand
13 Dollars exactly) payable by Defendant United States Postal Service and the other
14 terms of this Stipulation and Agreement, as set forth above, plaintiff agrees to
15 immediately upon execution of this agreement, execute the accompanying
16 Stipulation and [Proposed] Order for Dismissal with Prejudice, which stipulation
17 shall dismiss, with prejudice, all claims asserted in this Action or any claims that
18 could have been asserted in this Action, which is captioned *David McKew v. City*
19 *and County of San Francisco and United States Postal Service*, Case No. 08-0855
20 EDL and related Case 07-3620 EDL. The fully executed Stipulation of Dismissal
21 will be held by counsel for the United States Postal Service and will be filed with
22 the Court upon notice from plaintiff's counsel of receipt of the settlement amount
23 and the completion of the settlement terms described herein.

24 6. This settlement is subject to approval by all applicable boards and agencies of the
25 defendants. Defendants anticipate the approval process will be completed in
26 approximately 30-60 days. Defendant United States Postal Service will process
27 payment within 30 days of the filing of this executed stipulation and proposed
28 order. If either defendant does not approve this settlement, there is no settlement.

- 1 7. It is also agreed by and among the parties that neither the plaintiff nor plaintiff's
2 attorneys may make any claim for attorney's fees or other costs or expenses of
3 litigation against any Defendant, their agents, servants, or employees in
4 connection with plaintiffs' claims as set forth herein.
- 5 8. This agreement may be pled as a full and complete defense to any subsequent
6 action or other proceeding which arises out of the claims released and discharged
7 by the agreement.
- 8 9. The parties agree that this settlement will be funded as follows. The City and
9 County of San Francisco will contribute \$10,000.00 (Ten Thousand Dollars
10 exactly) to the settlement, and the United States Postal Service will contribute
11 \$8,000.00 (Eight Thousand Dollars exactly) to the settlement. Both defendants
12 will issue settlement drafts made payable to "Kern Noda Devine & Segal and
13 plaintiff David McKew" jointly.
- 14 10. Plaintiff hereby releases and forever discharges the City and County of San
15 Francisco and the United States Postal Service, and each of them, as well as any
16 and all of each defendant's past and present officials, employees, agents,
17 attorneys, insurers, their successors and assigns, from any and all obligations,
18 damages, liabilities, actions, causes of actions, claims and demands of any kind
19 and nature whatsoever, whether suspected or unsuspected, at law or in equity,
20 known or unknown, arising out of the allegations set forth in plaintiffs' pleadings
21 in this action.
- 22 11. The provisions of California Civil Code Section 1542 are set forth below:
23 "A general release does not extend to claims which the creditor
24 does not know or suspect to exist in his favor at the time of
25 executing the release, which if known by him must have materially
26 affected his settlement with the debtor."
27 Plaintiff, having been apprised of the statutory language of Civil Code Section
28 1542 by his attorney of record, and fully understanding the same, nevertheless
 elects to waive the benefits of any and all rights they may have pursuant to the

1 provision of that statute and any similar provision of federal law. Plaintiff
2 understands that, if the facts concerning injuries or liability for damages pertaining
3 thereto are found hereinafter to be other than or different from the facts now
4 believed by them to be true, this settlement agreement shall be and remain
5 effective notwithstanding such material difference.

6 12. The parties agree that this stipulation is intended to be a full and final settlement
7 of all claims or potential claims of the plaintiff arising out of the allegations set
8 forth in plaintiff's pleadings in this action. Plaintiff agrees to indemnify and hold
9 harmless defendant City and County of San Francisco, defendant United States
10 Postal Service, and each of them, from any and all claims, demands, obligations,
11 liens, and lawsuits brought against either defendant, their agencies or employees,
12 arising out of the allegations set forth in plaintiff's complaints in this action.

13 13. This instrument shall constitute the entire agreement between the parties, and it is
14 expressly understood and agreed that the agreement has been freely and
15 voluntarily entered into by the parties hereto with the advice of counsel, who have
16 explained the legal effect of this agreement. The parties further acknowledge that
17 no warranties or representations have been made on any subject other than as set
18 forth in this Agreement. This Agreement may not be altered, modified or
19 otherwise changed in any respect except by writing, duly executed by all of the
20 parties or their authorized representatives.

21 14. Plaintiff and plaintiff's attorneys have been informed that payment of the
22 settlement amount may take 45 days or more to process. Defendant will submit a
23 request for payment to the Department of Treasury Judgment Fund within 2 days
24 after the Court approval of the stipulation and proposed order described in
25 paragraph 11.

26 15. The parties agree that the district court shall retain jurisdiction over this matter for
27 the purposes of resolving any dispute alleging a breach of this Stipulation and
28 Agreement.

- 1 16. Each party acknowledges that they have been represented by and have relied upon
2 independent counsel in negotiating, preparing and entering into this Stipulation
3 and Agreement and that they have had the contents of this Stipulation and
4 Agreement fully explained by counsel and that they are fully aware of and
5 understand all of the terms of the agreement and the legal consequences thereof.
6 It is further acknowledged that the parties have mutually participated in the
7 drafting of this Stipulation and Agreement and it is agreed that no provision
8 herein shall be construed against any party hereto by virtue of the drafting of this
9 Stipulation and Agreement.
- 10 17. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or
11 unenforceable, the validity, legality, and enforceability of the remaining
12 provisions shall not in any way be affected or impaired thereby. This instrument
13 shall constitute the entire agreement between the parties, and it is expressly
14 understood and agreed that this agreement has been freely and voluntarily entered
15 into by the parties hereto with the advice of counsel, who have explained the legal
16 effect of this agreement. The parties further acknowledge that no warranties or
17 representations have been made on any subject other than as set forth in this
18 agreement.
- 19 18. The parties agree that, should any dispute arise with respect to the implementation
20 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement
21 and pursue any of the original causes of action. Plaintiff's sole remedy in such a
22 dispute is an action to enforce the Agreement in district court. This settlement
23 agreement may be signed in counterparts.
- 24 19. Defendants City and County of San Francisco and United Postal Service release
25 any claim or potential claim against the other arising from the subject matter of
26 this litigation.
- 27 20. The parties further agree that the filing of this executed Stipulation and
28 Agreement shall notify the Court of the parties' agreement to vacate all pending

1 discovery, motion hearing dates, settlement or pretrial deadlines or trial date associated with this
2 litigation.


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4 IT IS SO STIPULATED.

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6 DATED: August / , 2008



DAVID MCKEW, Plaintiff

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8 DATED: August / , 2008

KERN, NODA, DEVINE & SEGAL


Philip A. Segal, Esq.
ATTORNEYS FOR PLAINTIFF

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11
12 DATED: August , 2008

SAN FRANCISCO CITY ATTORNEY'S OFFICE

13
14
15 MEGHAN HIGGINS, Esq.
Deputy City Attorney
ATTORNEYS FOR DEFENDANT CITY AND
16 COUNTY OF SAN FRANCISCO AND S. F.
MUNICIPAL RAILWAY

17
18
19 DATED: August , 2008

JOSEPH P. RUSSONIELLO
United States Attorney

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22 JONATHAN U. LEE
Assistant United States Attorney
Attorneys for the United States Postal Service

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24 PURSUANT TO STIPULATION, IT IS SO ORDERED:

25 DATED: _____

The Honorable Elizabeth D. Laporte
UNITED STATES MAGISTRATE JUDGE

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Stipulation of Settlement
C 08-0855 EDL

-7-

1 discovery, motion hearing dates, settlement or pretrial deadlines or trial date associated with this
2 litigation.

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4 **IT IS SO STIPULATED.**

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6 DATED: August , 2008

DAVID MCKEW, Plaintiff

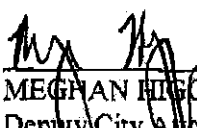
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8 DATED: August , 2008

KERN, NODA, DEVINE & SEGAL

Philip A. Segal, Esq.
ATTORNEYS FOR PLAINTIFF

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12 DATED: August /, 2008

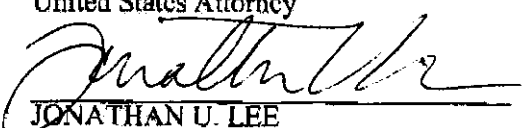
SAN FRANCISCO CITY ATTORNEY'S OFFICE

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MEGHAN HIGGINS, Esq.
Deputy City Attorney
ATTORNEYS FOR DEFENDANT CITY AND
COUNTY OF SAN FRANCISCO AND S. F.
MUNICIPAL RAILWAY

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18
19 DATED: August /, 2008

JOSEPH P. RUSSONIELLO
United States Attorney

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21 

JONATHAN U. LEE
Assistant United States Attorney
Attorneys for the United States Postal Service

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24 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

25 DATED: _____

The Honorable Elizabeth D. Laporte
UNITED STATES MAGISTRATE JUDGE